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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Double Cross Poker LLC

Serial No. 76303240

Norman E. Lehrer, Esquire for Double Cross Poker LLC.

Leslie L. Richards, Trademark Examining Attorney, Law
Office 106 (Mary I. Sparrow, Managing Attorney).

Before Hohein, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Double Cross Poker LLC has filed an application to
register the mark DOUBLE CROSS POKER for "casino table
games."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the

¹ Serial No. 76303240, filed on August 23, 2001, which is based on an allegation of a bona fide intention to use the mark in commerce. The word "POKER" is disclaimed apart from the mark as shown.

ground that applicant's mark, when applied to its goods, so resembles the mark DOUBLE CROSS, which is registered for "disposable ticket sets for playing a game of chance,"² as to be likely to cause confusion, or mistake or to deceive.

Applicant has appealed. Briefs have been filed, but no oral hearing was requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We start by comparing applicant's and registrant's marks in their entireties to determine if they are similar in sound, appearance, and/or meaning such that they create similar commercial impressions. The test is not whether

² Registration No. 1,880,757, issued February 28, 1995; combined affidavit under Sections 8 & 15 accepted and acknowledged, respectively.

the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. Further, the focus is on the recollection of the average purchaser, who normally retains a general rather than a specific recollection impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In this case, both marks contain the same term DOUBLE CROSS. Although applicant's mark contains the additional term POKER, we find this additional element is not sufficient to distinguish the marks. Although marks must be compared in their entireties, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. In re *National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Regarding descriptive terms, our primary reviewing court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000) (Court held that the addition of SWING to registrant's mark LASER still resulted in likelihood of confusion). In this case, POKER

is a highly descriptive, if not generic, term as used in connection with casino table games, and it has been disclaimed. Given the highly descriptive/generic nature of the word POKER, the addition of this term in applicant's mark DOUBLE CROSS POKER simply indicates to consumers the type of casino table game, i.e., "poker." Consumers would be unlikely to rely on the term POKER in distinguishing a casino table game. In sum, we find that the marks DOUBLE CROSS and DOUBLE CROSS POKER are substantially similar in sound, appearance, meaning and commercial impression.

Next, we consider whether applicant's and registrant's goods are related. It is not necessary that the respective goods or services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the goods or services. In re International Telephone & Telegraph Corp., 197 USPQ2d 910 (TTAB 1978).

Applicant's goods are casino table games while registrant's goods are disposable ticket sets for playing a game of chance. Clearly, applicant's and registrant's goods are not identical, but we cannot agree that these goods are unrelated, as applicant argues. As noted by the Examining Attorney, both applicant's casino table games and registrant's disposable ticket sets are games of chance. Moreover, we must consider the goods as they are identified in applicant's application and the cited registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). In the absence of any limitations in the cited registration, we must presume that registrant's disposable ticket sets for playing a game of chance cover various themes, including a poker theme. Moreover, we must assume that registrant's goods travel in all normal channels of trade, including casinos, to the usual class of purchasers, namely, members of the general public who play games of chance. Thus, applicant's argument that its goods and registrant's goods travel in different channels of trade to different purchasers is simply not well taken.

Further, we cannot accept applicant's unsupported argument that disposable ticket sets for playing a game of chance are "very low-priced" such that "consumers would buy

[them] without being concerned over the name thereof."

(Brief, p. 2). We have no basis to find that consumers pay little attention to the trademarks which appear on such ticket sets. Indeed, it is plausible that consumers would pay attention to the trademarks because they would want to know which disposable ticket sets produce winning results.

In short, we agree with the Examining Attorney's conclusion that applicant's casino table games and registrant's disposable ticket sets for playing a game of chance are related. Purchasers aware of registrant's DOUBLE CROSS disposable ticket sets for playing a game of chance who then encounter applicant's DOUBLE CROSS POKER casino table games are likely to believe that these games are offered by the same company or are sponsored or licensed by the same entity.

Decision: The refusal to register under Section 2(d) is affirmed.